

**CALIFORNIA ENERGY COMMISSION**

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**STATE OF CALIFORNIA**

**Energy Resources Conservation  
 and Development Commission**

<b>In the Matter of:</b>	)	<b>Docket No. 97-AFC-1</b>
	)	
Application for Certification for the	)	<b>ORDER DENYING MOTION FOR</b>
High Desert Power Project	)	<b>PREPARATION OF ENVIRONMENTAL</b>
	)	<b>IMPACT REPORT</b>
	)	

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**I. BACKGROUND**

On July 14, 1999, Intervenor Gary Ledford filed a Motion seeking the preparation of a traditional Environmental Impact Report (EIR) in the present case. Mr. Ledford bases his Motion on various grounds, including: a disagreement with Applicant over water and air issues; a belief that Applicant has been non-responsive in replying to his data requests; and the position that an EIR will analyze the cumulative impacts of, and the alternatives to, the proposed project, as well as the project's accompanying social and economic factors.

Mr. Ledford requests the Commission direct that an EIR be prepared "...which address[es] the concerns of the Public, in relation to Environmental Issues including the cumulative impacts associated with existing environmental problems of the added Power Project." (Motion, p. 4). Mr. Ledford also requests that we take notice of "...all filings in the Case of City of Barstow, et al vs. City of Adelanto, et al, Riverside Superior Court Case No. 208568, 4<sup>th</sup> Circuit No. E17881 and California Supreme Court Case Number SO 71728." (Motion, p.3, item 7).

**II. DISCUSSION**

The California Environmental Quality Act (CEQA) generally requires all state agencies to prepare EIRs on projects they propose to carry out or approve that may cause a significant adverse environmental effect. [Pub. Resources Code, § 21100, subd. (a)]. However, CEQA also provides that a state agency permitting program may become exempt from the EIR requirement if the Resources Agency Secretary certifies that the program meets the basic requirements for CEQA documentation, including written analyses of environmental impacts, mitigation, and alternatives. [Pub. Resources Code, § 21080.5]. Certified regulatory programs remain subject to CEQA's substantive requirements, including the necessity to mitigate adverse impacts where feasible and not to approve projects with

unmitigable adverse impacts unless the project has overriding benefits. (Cal. Code of Regs., tit. 14, § 15250). The Resources Secretary has certified the Commission's power facility licensing program. [*Id.*, § 15251, subd. (k)].

Basically, this means two things. First, the process used and the documents prepared by the Commission in its "functionally equivalent" review process may differ from those used in a traditional EIR process. Second, even with these procedural differences, the Commission must nevertheless incorporate the substantive requirements of a traditional EIR review in its powerplant certification program.

Insofar as process is concerned, we note that the Commission provides a greatly enhanced opportunity for public participation, comment, and review when compared to the traditional EIR. For example, all Commission events must be noticed and open to the public; individuals have the right to express their views at every workshop, conference, or hearing. Thus, our process provides ample opportunity for all to participate and to argue their positions on the meaning and significance of the information presented. It does not, however, guarantee that all will agree with the conclusions derived from the analysis performed. By contrast, while public events such as hearings are encouraged under the traditional EIR process, they are *not required*.<sup>1</sup>

Mr. Ledford also requests that an EIR be prepared by an "...unbiased independent consulting firm...". (Motion, p.1). This request ignores the fact that, by regulation, Commission staff functions as an independent party in a licensing proceeding (Cal. Code of Regs., tit. 20, § 1712.5), and is charged with performing an unbiased evaluation of a proposed project. We are unaware of any persuasive indications that Staff's conduct or analysis in the present case has failed to meet this standard.

Further, Mr. Ledford notes that an EIR includes an analysis of alternatives, socioeconomic impacts, and the cumulative effects of the proposed project. While it is true that these are elements of an EIR, it is equally true these items are also comprehensively reviewed in the Commission's process. In the present case, the January 1999 Staff Assessment and supplemental materials contain Staff's analysis of those topics. This analysis has been publicly disclosed and is subject to review by all interested. If Mr. Ledford disagrees with this evaluation, or any other, he may choose to challenge them in future hearings.

We will soon be conducting evidentiary hearings covering these and a score of other technical topic areas pertinent to the High Desert project. As an intervenor, Mr. Ledford has the right to present independent relevant evidence, or to question witnesses from the other parties, on as many of these areas as he wishes, as long as he complies with the filing requirements imposed. In any event, he may offer unsworn public comment on any area he

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<sup>1</sup> More specifically, the guidelines implementing CEQA provide:

- Public hearings are encouraged, but not required as an element of the CEQA process. [Cal. Code of Regs., tit. 14, § 15087(i)].
- CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communication. [*Id.*, § 15202(a); see also the discussion note to § 15087(i)].

chooses. Based upon our own evaluation of the evidence received during the hearing phase, and the comments of record, we will decide the merits of the various positions presented and explain the reasons supporting our decision.

Finally, section 1213 of our regulations (Cal. Code of Regs., tit. 20, § 1213) provides in part:

...the Commission may take official notice of any generally accepted matter within the Commission's field of competence, and of any fact which may be judicially noticed by the courts of this state.

Taking official notice is, in general, appropriate where the matter noticed is the official act or rule of a governmental body or a matter which is of generalized knowledge, universally known, and not reasonably the subject of dispute. (Evid. C., § 451). While the existence of court records may be noticed (Evid. C. § 452(d)), the truth of the matters asserted in the pleadings contained in the records may not unless incorporated into a formal judicial action such as an order, or finding of fact and conclusion of law.

In the present instance, it appears that Mr. Ledford desires us to accept as true the matters contained in the pleadings and other filings in pending litigation. Such request is inappropriate, and granting such request is not permitted under the law.

### **III. ORDER**

We deny Intervenor Ledford's motion to prepare an EIR in this case. The Commission's certified regulatory program is, by law, the functional equivalent of the traditional EIR process. Moreover, the topical analyses mentioned by Mr. Ledford are already included within the scope of the Commission's review and will be the subject of future evidentiary hearings. Mr. Ledford already possesses the right to participate in these hearings to the extent he chooses.

We also deny Mr. Ledford's request to take notice of the pleadings and other filings enumerated in his Motion.

Dated: \_\_\_\_\_

ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

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ROBERT A. LAURIE, Commissioner  
Presiding Member  
High Desert AFC Committee

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DAVID A. ROHY, Ph.D., Vice Chair  
Associate Member  
High Desert AFC Committee